

Town of Amherst
Zoning Board of Appeals - Special Permit
DECISION

Applicant and Owner: Miles Herter, 401 Shays Street, Amherst, MA

Date Application filed with the Town Clerk: September 12, 2005

Nature of request: Petitioner seeks a Special Permit, under Section 5.013 of the Zoning Bylaw, to use a portion of an existing outbuilding (plus a new addition to the existing shop and barn) as a cabinet shop and to store materials related to carpentry and construction work in the existing and proposed outbuildings.

Location of property: 401 Shays Street, (Map 20D, Parcel 3, R-N Zone)

Legal notice: Published in the Daily Hampshire Gazette on September 21 and 28, 2005, and sent to abutters on September 19, 2005.

Board members: Zina Tillona, Barbara Ford and Hilda Greenbaum

Submissions: The applicants submitted the following documents which are on file in the Planning Department:

- A Management Plan
- A Site Plan, undated, showing the property, the house and outbuildings and the driveway
- A context map, undated, from the Town of Amherst GIS Public Map Browser showing the location of the property within its South Amherst neighborhood.

The public submitted the following documents which are on file in the Planning Department:

- A letter from Anna and William Kennick of 415 Shays Street, dated October 3, 2005, in support of the application

The Planning Department submitted the following document:

- A Memorandum Re: ZBA FY2006-00012, dated September 30, 2005, commenting on zoning, previous permits, dimensional requirements, parking, landscape planting and lighting and the Management Plan.

Site Visit: October 4, 2005

At the site visit the Board was met by Miles Herter, the applicant, and Penny Herter, the applicant's wife. The Board observed the following:

- The location of the property in a neighborhood of older homes in close proximity to the South Amherst Common.
- The circular driveway that traverses the front of the house.
- The views of the Holyoke Range in the distance.
- The existing wood frame house, barn and garage that is large enough to store three cars.

- The area to the west of the barn where the addition will be built.
- The area where the driveway will be extended to the addition.
- The outside of the second-story of the barn which, despite a Special Permit (ZBA92-05) having been granted for an apartment in 1991, was never used as an apartment.
- The open-air covered porch that connects the house with the barn and garage complex.

Public Hearing: October 6, 2005.

At the public hearing Miles Herter, the applicant, presented the petition. Mr. Herter made the following comments:

- He would like to maintain a woodworking shop in the existing outbuilding (barn) attached to the house at 401 Shays Street; this barn is located behind the garage.
- The barn has a dirt floor and Mr. Herter intends to install a concrete floor.
- The garage that is attached to the barn is large enough to hold three vehicles; it has three bays with three garage doors.
- He plans to build a 12' x 24' addition on the side of the barn with an approach drive connected to the existing driveway.
- Between the house and the barn is an open breezeway with glass panels in one section; the breezeway will remain as it is for now.
- There was a previous Special Permit for an apartment on the second floor of the barn, but the work was never done to convert the space into an apartment; there is no kitchen and no bathroom on the second floor, merely an open space.

Ms. Greenbaum noted that the Special Permit for the apartment, granted in 1991, has expired since it was never implemented.

Mr. Herter went on to make the following comments:

- The garage bay on the northwest side of the garage will be used to store materials and tools.
- The assembly space or workshop will be in the new addition, behind the garage.
- Right now there is no trash being generated by the shop but Mr. Herter plans to install a two-yard rolling dumpster, for refuse related to the woodworking shop; the dumpster will be parked at the northwest side of the building and emptied when necessary.
- Snow from the driveway will be plowed into, and stored on, the old farm road that lies to the west of the barn and garage, which is not used for access to the rear of the property in the winter.

Ms. Ford noted that there may be a need for a parking space for an occasional employee.

The Board reviewed the Management Plan as follows:

- The normal hours of operation will be 8:00 a.m. to 6 p.m.
- There will be no direct sales on the site.
- There will be few clients on the site.
- Mr. Herter's pick-up truck will be the only work-related vehicle regularly parked on the site.
- The machinery used will be small commercial shop equipment.

- There will be no machinery operated outside of the buildings.
- The west wall of the shop will be an insulated six-inch wall which will provide sound insulation for the machinery and will protect the nearest neighbor on the west side from excessive noise emanating from the building.
- There will be a 12' x 24' addition built onto the western end of the existing barn, which will be used for assembly and storage.
- The machinery room will be in the existing barn area.
- The second floor will also be expanded as part of the 12' x 24' addition.

Ms. Ford inquired about the extension of the second floor and whether there would be flammable materials and paints stored in the barn and in the addition below this second floor area.

Mr. Herter stated that he has a flame and explosion proof paint cabinet where he will store paints and other flammable materials. Mr. Herter explained that he could place this cabinet away from the area of the building that has or will have a second story since the second story might, in the future, be used as living space.

Bonnie Weeks, Building Commissioner, asked about the space on the second floor and whether it is now used living space. Mr. Herter stated that it is an enclosed space but is not finished as living space.

Ms. Ford asked whether Mr. Herter would be working after 6:00 p.m. Mr. Herter stated that he would not be doing noise-generating milling work after 6:00 p.m. but that occasionally he would be working late on sanding and assembly.

Ms. Tillona noted that there could be a condition that would prohibit any noise outside of the building that would be greater than ambient noise after 6:00 p.m.

Ms. Weeks asked about deliveries to or from the site. Mr. Herter stated that the deliveries would be "low impact". He stated that during a typical job [4 to 6 weeks in duration according to the Management Plan] there may be 1 or 2 deliveries by flat-bed truck. There will be no deliveries before 7:00 a.m. or after 6:00 p.m. He also noted that his pick-up truck will be used to cart things off-site and that he sometimes rents a U-Haul truck or van to make deliveries of finished products off-site.

Ms. Weeks noted that there are provisions in the Zoning Bylaw that limit the slope on new driveways. Mr. Herter stated that there will be a new paved spur off the existing driveway at the level of the garage to serve the proposed addition to the barn and to allow access by the truck to empty the dumpster. The grade on this new spur will be essentially flat.

There were no comments from the public.

Barbara Ford MOVED to close the evidentiary portion of the public hearing. Hilda Greenbaum SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting – Discussion

At the public meeting, the Board discussed the application. The Board members stated that they did not have any problems with the application.

Public Meeting – Findings:

Under Zoning Bylaw Section 5.013, Home Occupation, the Board found that:

5.0130 – The use is clearly secondary to the use of the premises for dwelling purposes because the shop area will be only 600 square feet, plus one bay of storage in the garage, and the house is considerably larger than the space to be used for the workshop.

5.0131 – No more than two persons other than residents of the premises are regularly employed there in connection with such use because Mr. Herter will be the only person regularly employed there and he will occasionally have one part time employee.

5.0132 – No trading in merchandise is regularly conducted except for products made on the premises because all sales of products will be off-site.

5.0133 – No external change is made which alters the residential appearance of the building because the addition being constructed will be compatible in materials and colors with the existing house and outbuildings.

5.0134 – All operations, including incidental storage, are carried on within the principal or accessory building, and there will be no outward evidence that the premises are being used for any purpose other than residential because all activities related to woodworking will be carried on in the barn and the addition, and one garage bay will be used for storage of materials.

5.0135 and 5.0136 – The proposed accessory use would be suitably located in the neighborhood in which it is proposed and the use will be reasonably compatible with other uses permitted as of right in the same district because the neighborhood has a rural character, with the houses set far apart on large lots, and an accessory woodworking shop is a compatible use in such a rural residential setting.

5.0137 – The use will not constitute a nuisance by reason of an unacceptable level of air or water pollution, excessive noise or visually flagrant structures and accessories, and the use is not a serious hazard to abutters, vehicles or pedestrians because all activities related to woodworking will be confined within the existing and proposed structures, machinery and noise will be confined to the existing barn structure, the west wall of the addition will be insulated to mitigate noise emanating from the building and the conditions of the permit will limit the amount of noise permitted after 6:00 p.m. In addition the addition will be constructed to be visually compatible with existing buildings on the site, there is ample space for parking of the pick-up truck associated with the woodworking shop and deliveries to the site will be occasional, on the order of once every three or four weeks.

5.0138 – Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including special attention to safe vehicular circulation on the site and at the intersection with abutting streets because the existing and proposed outbuildings are being renovated to provide accommodations for the proposed use, the existing garage is suited to storage of materials and there is a long driveway with adequate parking space for the pick-up truck associated with the woodworking use. In addition, the property is located over 700 feet away from the nearest intersection.

Public Meeting – Zoning Board Decision

Hilda Greenbaum MOVED to approve the application with conditions. Barbara Ford SECONDED the motion.

For all the reasons stated above the Board VOTED unanimously to GRANT a Special Permit, with conditions, under Section 5.013 of the Zoning Bylaw, to use a portion of an existing outbuilding (plus a new addition to the existing shop and barn) as a cabinet shop and to store materials related to carpentry and construction work in the existing and proposed outbuildings, as described in the application of Miles Herter, at 401 Shays Street, (Map 20D, Parcel 3, R-N Zone).

ZINA TILLONA BARBARA FORD HILDA GREENBAUM
FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2005.
NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, under Section 5.013 of the Zoning Bylaw, to use a portion of an existing outbuilding (plus a new addition to the existing shop and barn) as a cabinet shop and to store materials related to carpentry and construction work in the existing and proposed outbuildings, as described in the application of Miles Herter, at 401 Shays Street, (Map 20D, Parcel 3, R-N Zone), with conditions as follows:

1. The project shall be built according the site plan approved by the Board on October 6, 2005. The exterior materials and colors shall be compatible with the existing buildings on the site.
2. The site shall be managed according to the Management Plan approved by the Board on October 6, 2005.
3. The hours of operation shall be 8:00 a.m. to 6:00 p.m. After 6:00 p.m. the exterior noise level at the property line shall be no higher than the ambient noise level in the neighborhood.
4. Deliveries shall be no earlier than 7:00 a.m. and no later than 6:00 p.m.
5. There shall be no direct sales on site.
6. All parking shall be on-site except for an occasional delivery truck.
7. Exterior lighting shall be downcast. No exterior lighting shall shine onto adjacent streets or properties.
8. Upon change of ownership the new owner shall submit a Management Plan to the Board for approval at a public meeting.

ZINA TILLONA, Chair
Amherst Zoning Board of Appeals

DATE